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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,970	09/14/2006	Yvette Pescher	1022702-000298	6435

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BUCHANAN, INGERSOLL & ROONEY PC  
POST OFFICE BOX 1404  
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EXAMINER
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HRUSKOCI, PETER A

ART UNIT	PAPER NUMBER
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1797

NOTIFICATION DATE	DELIVERY MODE
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01/06/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/559,970	<b>Applicant(s)</b> PESCHER ET AL.	
	<b>Examiner</b> /Peter A. Hruskoci/	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 43-57 and 59-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43-57 and 59-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-56, and 59-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Favstritsky et al. 4,966,716 in view of Yu et al. 5,670,055. Favstritsky et al. disclose (see col. 5 line 15 through col. 8 line 2, and col. 8 line 45) a method for controlling bacterial growth in a wastewater system substantially as claimed. The claims differ from Favstritsky et al. by reciting that a specific biocide is added or contacted with the system. Yu et al disclose (see col. 2 line 21 through col. 4 line 67) that it is known in the art to add the recited biocide to an aqueous system to aid in controlling the growth of bacterial biomass in the aqueous system. It would have been obvious to one skilled in the art to modify the method of Favstritsky et al. by addition of the recited biocide in view of the teachings of Yu et al., to aid in controlling growth of the biomass in the system. The specific amount of biocide added, would have been an obvious matter of process optimization to one skilled in the art, depending on the specific aqueous system treated and results desired, absent a sufficient showing of unexpected results.

Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Favstritsky et al. 4,966,716 in view of Yu et al. 5,670,055 as above, and further in view of Jones et al. 6,784,168. The claim differs from the references as applied above, by reciting that the biocide is formulated with one or more specific components. Jones et al. disclose (see col. 2 line 21 through col. 4 line 67, and col. 9 lines 4-30) that it is known in the art to add a composition including the recited

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biocide with the recited components to an aqueous system, to aid in inhibiting growth of bacteria in aqueous systems. It would have been obvious to one skilled in the art to modify the references as applied above, by addition of the recited components in view of the teachings of Jones et al., to aid in controlling growth of the biomass in the system.

Applicants allege that neither Favstritsky et al. nor Yu et al. expressly disclose the uncoupling function of disrupting the proton flux and reducing the energy available to the bacteria as provided in the instant specification, with the recited uncoupling agents of the instant method. It is submitted that the disrupting of a proton flux and reducing of energy available to bacteria, is not recited in the instant claims. It is further submitted that the biocides disclosed in Favstritsky et al. and Yu et al. as applied above, would appear to produce this uncoupling function. Furthermore, applicants have not provided sufficient comparative evidence with Favstritsky et al. or Yu et al. to support the above allegation.

Applicants' arguments concerning Jones et al. are based on the propriety of the combination of Favstritsky et al. and Yu et al.. This combination is deemed properly applied for reasons stated above.

Claims 43 and 65 properly written to include before the period - and said biocide reduces sludge growth in said aqueous system - would be allowable in view of the test results disclosed on pages 11 and 12 of the instant specification.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Peter A. Hruskoci/ whose telephone number is (571) 272-1160. The examiner can normally be reached on Monday through Friday from 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

12/31/09

/Peter A. Hruskoci/  
Primary Examiner  
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